

Message Text

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C O N F I D E N T I A L RABAT 5083

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FOR NEA AND L ONLY

E. O. 11652: XGDS-3
TAGS: ASEC, PDIP, MO, US
SUBJ: IMMUNITIES OF MISSION PERSONNEL

REF: A) RABAT 3442, B) RABAT 3519, C) RABAT 3520, D) STATE 152867

1. THE ROUSSEAU CASE HAS RAISED THE ISSUE OF WHO ON THE MISSION STAFF IN MOROCCO ENJOYS IMMUNITIES AND TO WHAT EXTENT. (WE ALSO SUSPECT THAT IT MAY WELL HAVE FOCUSSED CONTINUING INTRA-USG ATTENTION ON THE STATUS OF MARINE GUARDS WORLDWIDE.) WHILE IT IS CLEARLY TOO EARLY FOR DISCUSSIONS WITH THE GOM PENDING FURTHER DEVELOPMENTS IN THE ROUSSEAU CASE AND RESOLUTION OF THE HOUSE AND SENATE BILLS REPEALING OUR 1780 LAW, WE BELIEVE IT WOULD BE PRUDENT TO START OUR LEGAL AND POLICY HOMEWORK AS SOON AS POSSIBLE.

2. OFTEN HAPPIEST TO CONSIGN THORNY AREAS OF POTENTIAL DISARGEEMENT TO A COMFORTABLE AMBIGUITY, THE GOM IN THIS CASE WILL BE FORCED BY THE CIRCUMSTANCES TO RESPOND TO ANY APPROACH IN A FORMAL AND LEGALISTIC MANNER WORTHY OF THE TRADITIONS INHERITED FROM THEIR FRENCH MENTORS. INDEED THE ONLY REACTION OF THE FEW
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SENIOR LEVEL MOROCCAN OFFICIALS WITH WHOM THERE HAVE BEEN RECENT DISCUSSION TOUCHING ON OTHER ASPECTS OF THE ROUSSEAU CASE HAS BEEN THE PERSONAL SUGGESTION OF AN "EXTRADITION TREATY". EARLY IN THE CASE THE MFA'S NOTE OF 12 JUNE, 1978 (REFERENCE C, WITH TRANSLATION IN REFERENCE D) INVITED A "GENERAL SOLUTION. . . BY COMMON AGREEMENT. . . WITH A VIEW OF RESOLVING IN THE

FUTURE, ON THE BASIS OF RECIPROCITY, SITUATIONS OF THIS TYPE. . . IN WHICH IMMUNITY FROM CRIMINAL JURISDICTION CANNOT BE RECOGNIZED WITHOUT RESTRICTION." IN DISCUSSING THIS SECTION, MFA LEGAL AND TREATY AFFAIRS OFFICE DIRECTOR MUSTAPHA GHARBI MENTIONED AT THAT TIME THREE PRSSIBILITIES (REF B): A BILATERAL EXTRADITION TREATY; A BILATERAL AGREEMENT TO CATEGORIZE THE STATUS OF VARIOUS US MISSION PERSONNEL WHILE UPHOLDING THE GOM'S RESERVATIONS TO ARTICLE 37, PARA 2 OF THE VIENNA CONVENTION ON DIPLOMATIC RELATIONS; OR A "REVISION" OF THE GOM'S RESERVATION. WE CONSIDER THE FIRST OF THESE IS NEITHER GERMANE NOR DESIRABLE TO WASHINGTON.

3. SINCE ARTILCE 47 OF THE VIENNA CONVENTION ALLOWS MORE FAVORABLE TREATMENT BY CUSTOM OR AGREEMENT, ONE POSSIBLY PROMISING TRACK TO PURUSE MIGHT BE FOR THE GOM TO AGREE BILATERALLY ON THE ESSENTIALS OF ARTICLE 37, WITHOUT OFFICIALLY WITHDRAWING ITS RESERVATION. WE WOULD, OF COURSE, WANT TO ENSURE AGREEMENT AS TO WHO COMPRISE THE VARIOUS CATEGORIES OF PERSONNEL.

4. WE UNDERSTAND THERE MAY BE COMPELLING CONSIDERATIONS OF WORLDWIDE POLICY THAT TRANSCEND THE SPECIFIC CASE OF MOROCCO. HOWEVER, WE HOPE THAT DEPARTMENT AND CONCERNED AGENCIES FULLY REALIZE THE VERY REAL CONFIDENTIAL

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COST ALREADY TO OUR WORKING RELATIONS WITH SEVERAL MOROCCAN LEADERS AND THE EVEN GREATER COST AS WORD SLOWLY FILTERS DOWN TO THE MANY CONCERNED MOROCCANS OFFICIALS THAT, IN EFFECT, THEIR EMOTIONALLY HELD POSITION HAS BEEN OVERRIDDEN. THUS ANY US APPROACH SHOULD FOLLOW A POSSIBLY LENGTHY COOLING-OFF PERIOD IRRESPECTIVE OF THE DISPOSITION OF THE ROUSSEAU CASE. IT SHOULD ALSO BE TAILORED CAREFULLY TO THE SPECIFIC CIRCUMSTANCES OF MOROCCO, FOR THE ROUSSEAU CASE HAS PROPELLED THE IMMUNITIES ISSUE INTO THE FOREFRONT OF OUR BILATERAL RELATIONS. WE CANNOT THINK IN TERMS OF MERELY A MOP-UP OPERATION AFTER A ROUTINE CASE. FINALLY THE DEPARTMENT SHOULD REALIZE THAT RAISING THE IMMUNITIES OF CERTAIN OF OUR PERSONNEL MAY WELL CALL INTO QUESTION THE EXTENSIVE PRIVILEGES HERE ACCORDED TO THE VERY CATEGORIES WHOSE IMMUNITIES WE WILL BE DISCUSSING (AND ON WHICH WE BELIEVE THE DEPARTMENT AND AFSA WOULD HAVE STRONG VIEWS).

5. IN SHORT WE ARE URGING THAT CONSIDERATION OF WHERE WE GO FROM HERE BE CLOSELY COORDINATED WITH THE

EMBASSY AND BRING TO BEAR THE POLITICAL AS WELL
AS LEGAL BACKSTOPPING OF THE DEPARTMENT. WE SOLICIT
THE DEPARTMENT'S VIEWS ON ANY AND ALL ASPECTS RAISED
BY THIS CABLE.
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